

By Representatives Bloom and Villalobos

1 A bill to be entitled
2 An act relating to offenses involving use or
3 possession of firearms by minors; amending s.
4 790.22, F.S.; relating to certain offenses
5 involving use or possession of a firearm by a
6 minor or offenses during the commission of
7 which the minor possessed a firearm; providing
8 that possession of a firearm by a minor in
9 violation of specified provisions constitutes a
10 felony of the third degree instead of a
11 misdemeanor of the first degree; providing or
12 revising penalties for certain offenses;
13 requiring secure detention for specified
14 periods, or increasing detention periods
15 imposed, for commission of certain initial,
16 second, or subsequent offenses; providing for
17 performance of community service in a manner
18 involving a hospital emergency room or other
19 medical environment dealing on a regular basis
20 with trauma patients and gunshot wounds;
21 providing that the minor offender may not
22 receive credit for time served before
23 adjudication of certain offenses; conforming
24 references and terminology; substituting
25 reference to the Department of Juvenile Justice
26 for reference to the Department of Health and
27 Rehabilitative Services; reenacting ss.
28 943.051(3)(b) and 985.212(1)(b), F.S., relating
29 to criminal justice information and
30 fingerprinting, and s. 985.215(2), F.S.,
31 relating to detention, to incorporate said

1 amendment in references; providing an effective
2 date.

3

4 Be It Enacted by the Legislature of the State of Florida:

5

6 Section 1. Section 790.22, Florida Statutes, is
7 amended to read:

8 790.22 Use of BB guns, air or gas-operated guns, or
9 electric weapons or devices by minor under 16; limitation;
10 possession of firearms by minor under 18 prohibited;
11 penalties.--

12 (1) The use for any purpose whatsoever of BB guns, air
13 or gas-operated guns, or electric weapons or devices, by any
14 minor under the age of 16 years is prohibited unless such use
15 is under the supervision and in the presence of an adult who
16 is acting with the consent of the minor's parent.

17 (2) Any adult responsible for the welfare of any child
18 under the age of 16 years who knowingly permits such child to
19 use or have in his or her possession any BB gun, air or
20 gas-operated gun, electric weapon or device, or firearm in
21 violation of the provisions of subsection (1) of this section
22 commits a misdemeanor of the second degree, punishable as
23 provided in s. 775.082 or s. 775.083.

24 (3) A minor under 18 years of age may not possess a
25 firearm, other than an unloaded firearm at his or her home,
26 unless:

27 (a) The minor is engaged in a lawful hunting activity
28 and is:

- 29 1. At least 16 years of age; or
30 2. Under 16 years of age and supervised by an adult.

31

1 (b) The minor is engaged in a lawful marksmanship
2 competition or practice or other lawful recreational shooting
3 activity and is:

- 4 1. At least 16 years of age; or
- 5 2. Under 16 years of age and supervised by an adult
6 who is acting with the consent of the minor's parent or
7 guardian.

8 (c) The firearm is unloaded and is being transported
9 by the minor directly to or from an event authorized in
10 paragraph (a) or paragraph (b).

11 (4)(a) Any parent or guardian of a minor, or other
12 adult responsible for the welfare of a minor, who knowingly
13 and willfully permits the minor to possess a firearm in
14 violation of subsection (3) commits a felony of the third
15 degree, punishable as provided in s. 775.082, s. 775.083, or
16 s. 775.084.

17 (b) Any natural parent or adoptive parent, whether
18 custodial or noncustodial, or any legal guardian or legal
19 custodian of a minor, if that minor possesses a firearm in
20 violation of subsection (3) may, if the court finds it
21 appropriate, be required to participate in classes on
22 parenting education which are approved by the Department of
23 Juvenile Justice, upon the first conviction of the minor. Upon
24 any subsequent conviction of the minor, the court may, if the
25 court finds it appropriate, require the parent to attend
26 further parent education classes or render community service
27 hours together with the child.

28 (c) No later than July 1, 1994, the district juvenile
29 justice boards or county juvenile justice councils or the
30 Department of Juvenile Justice shall establish appropriate
31 community service programs to be available to the alternative

1 sanctions coordinators of the circuit courts in implementing
2 this subsection. The boards or councils or department shall
3 propose the implementation of a community service program in
4 each circuit, and may submit a circuit plan, to be implemented
5 upon approval of the circuit alternative sanctions
6 coordinator.

7 (d) For the purposes of this section, community
8 service may be provided on public property as well as on
9 private property with the expressed permission of the property
10 owner. Any community service provided on private property is
11 limited to such things as removal of graffiti and restoration
12 of vandalized property.

13 (5)(a) A minor who violates subsection (3) commits a
14 felony ~~misdemeanor~~ of the third ~~first~~ degree; for a first
15 offense, shall serve a mandatory period of detention of 5 days
16 in a secure detention facility; ~~and~~, in addition to any other
17 penalty provided by law, shall be required to perform 100
18 hours of community service; ~~and~~:

19 1. If the minor is eligible by reason of age for a
20 driver license or driving privilege, the court shall direct
21 the Department of Highway Safety and Motor Vehicles to revoke
22 or to withhold issuance of the minor's driver license or
23 driving privilege for up to 1 year.

24 2. If the minor's driver license or driving privilege
25 is under suspension or revocation for any reason, the court
26 shall direct the Department of Highway Safety and Motor
27 Vehicles to extend the period of suspension or revocation by
28 an additional period of up to 1 year.

29 3. If the minor is ineligible by reason of age for a
30 driver license or driving privilege, the court shall direct
31 the Department of Highway Safety and Motor Vehicles to

1 withhold issuance of the minor's driver license or driving
2 privilege for up to 1 year after the date on which the minor
3 would otherwise have become eligible.

4 (b) For a second or subsequent offense, the minor
5 shall serve a mandatory period of detention of at least 10
6 days and not more than 30 days in a secure detention facility,
7 shall be required to perform not less than 100 nor more than
8 250 hours of community service, and:

9 1. If the minor is eligible by reason of age for a
10 driver license or driving privilege, the court shall direct
11 the Department of Highway Safety and Motor Vehicles to revoke
12 or to withhold issuance of the minor's driver license or
13 driving privilege for up to 2 years.

14 2. If the minor's driver license or driving privilege
15 is under suspension or revocation for any reason, the court
16 shall direct the Department of Highway Safety and Motor
17 Vehicles to extend the period of suspension or revocation by
18 an additional period of up to 2 years.

19 3. If the minor is ineligible by reason of age for a
20 driver license or driving privilege, the court shall direct
21 the Department of Highway Safety and Motor Vehicles to
22 withhold issuance of the minor's driver license or driving
23 privilege for up to 2 years after the date on which the minor
24 would otherwise have become eligible.

25
26 For the purposes of this subsection, community service shall
27 be performed, if possible, in a manner involving a hospital
28 emergency room or other medical environment that deals on a
29 regular basis with trauma patients and gunshot wounds.

30 (6) Any firearm that is possessed or used by a minor
31 in violation of this section shall be promptly seized by a law

1 enforcement officer and disposed of in accordance with s.
2 790.08(1)-(6).

3 (7) The provisions of this section are supplemental to
4 all other provisions of law relating to the possession, use,
5 or exhibition of a firearm.

6 (8) Notwithstanding s. 985.213 ~~39.042~~ or s. 985.215(1)
7 ~~39.044(1)~~, if a minor under 18 years of age is charged with an
8 offense that involves the use or possession of a firearm, as
9 defined in s. 790.001, including ~~other than~~ a violation of
10 subsection (3), or is charged for any offense during the
11 commission of which the minor possessed a firearm, the minor
12 shall be detained in secure detention, unless the state
13 attorney authorizes the release of the minor, and shall be
14 given a hearing within 24 hours after being taken into
15 custody. ~~Effective April 15, 1994,~~At the hearing, the court
16 may order that the minor continue to be held in secure
17 detention in accordance with the applicable time periods
18 specified in s. 985.215(5)~~39.044(5)~~, if the court finds that
19 the minor meets the criteria specified in s. 985.215(2)
20 ~~39.044(2)~~, or if the court finds by clear and convincing
21 evidence that the minor is a clear and present danger to
22 himself or herself or the community. The Department of
23 Juvenile Justice shall prepare a form for all minors charged
24 under this subsection that states the period of detention and
25 the relevant demographic information, including, but not
26 limited to, the sex, age, and race of the minor; whether or
27 not the minor was represented by private counsel or a public
28 defender; the current offense; and the minor's complete prior
29 record, including any pending cases. The form shall be
30 provided to the judge to be considered when determining
31 whether the minor should be continued in secure detention

1 under this subsection. An order placing a minor in secure
2 detention because the minor is a clear and present danger to
3 himself or herself or the community must be in writing, must
4 specify the need for detention and the benefits derived by the
5 minor or the community by placing the minor in secure
6 detention, and must include a copy of the form provided by the
7 department. The Department of Juvenile Justice must send the
8 form, including a copy of any order, without
9 client-identifying information, to the Division of Economic
10 and Demographic Research of the Joint Legislative Management
11 Committee.

12 (9) Notwithstanding s. 985.214 ~~39.043~~, if the minor is
13 found to have committed an offense that involves the use or
14 possession of a firearm, as defined in s. 790.001, other than
15 a violation of subsection (3), or an offense during the
16 commission of which the minor possessed a firearm, and the
17 minor is not committed to a residential commitment program of
18 the Department of Juvenile Justice ~~Health and Rehabilitative~~
19 ~~Services~~, in addition to any other punishment provided by law,
20 the court shall order:

21 (a) For a first offense, that the minor serve a
22 mandatory period of detention of 15 ~~5~~ days in a secure
23 detention facility and perform 100 hours of community service.

24 (b) For a second or subsequent offense, that the minor
25 serve a mandatory period of detention of at least 21 ~~10~~ days
26 and not more than 90 days in a secure detention facility and
27 perform not less than 100 nor more than 250 hours of community
28 service.

29
30 The minor shall not receive credit for time served before
31 adjudication. For the purposes of this subsection, community

1 service shall be performed, if possible, in a manner involving
2 a hospital emergency room or other medical environment that
3 deals on a regular basis with trauma patients and gunshot
4 wounds.

5 (10) If a minor is found to have committed an offense
6 under subsection (9), the court shall impose the following
7 penalties in addition to any penalty imposed under paragraph
8 (9)(a) or paragraph (9)(b):

9 (a) For a first offense:

10 1. If the minor is eligible by reason of age for a
11 driver license or driving privilege, the court shall direct
12 the Department of Highway Safety and Motor Vehicles to revoke
13 or to withhold issuance of the minor's driver license or
14 driving privilege for up to 1 year.

15 2. If the minor's driver license or driving privilege
16 is under suspension or revocation for any reason, the court
17 shall direct the Department of Highway Safety and Motor
18 Vehicles to extend the period of suspension or revocation by
19 an additional period for up to 1 year.

20 3. If the minor is ineligible by reason of age for a
21 driver license or driving privilege, the court shall direct
22 the Department of Highway Safety and Motor Vehicles to
23 withhold issuance of the minor's driver license or driving
24 privilege for up to 1 year after the date on which the minor
25 would otherwise have become eligible.

26 (b) For a second or subsequent offense:

27 1. If the minor is eligible by reason of age for a
28 driver license or driving privilege, the court shall direct
29 the Department of Highway Safety and Motor Vehicles to revoke
30 or to withhold issuance of the minor's driver license or
31 driving privilege for up to 2 years.

1 2. If the minor's driver license or driving privilege
2 is under suspension or revocation for any reason, the court
3 shall direct the Department of Highway Safety and Motor
4 Vehicles to extend the period of suspension or revocation by
5 an additional period for up to 2 years.

6 3. If the minor is ineligible by reason of age for a
7 driver license or driving privilege, the court shall direct
8 the Department of Highway Safety and Motor Vehicles to
9 withhold issuance of the minor's driver license or driving
10 privilege for up to 2 years after the date on which the minor
11 would otherwise have become eligible.

12 Section 2. For the purpose of incorporating the
13 amendment to section 790.22, Florida Statutes, in references
14 thereto, the following sections or subdivisions of Florida
15 Statutes are reenacted to read:

16 943.051 Criminal justice information; collection and
17 storage; fingerprinting.--

18 (3)

19 (b) A minor who is charged with or found to have
20 committed the following misdemeanors shall be fingerprinted
21 and the fingerprints shall be submitted to the department:

22 1. Assault, as defined in s. 784.011.

23 2. Battery, as defined in s. 784.03.

24 3. Carrying a concealed weapon, as defined in s.
25 790.01(1).

26 4. Unlawful use of destructive devices or bombs, as
27 defined in s. 790.1615(1).

28 5. Negligent treatment of children, as defined in s.
29 827.05.

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- 1 6. Assault or battery on a law enforcement officer, a
2 firefighter, or other specified officers, as defined in s.
3 784.07(2)(a) and (b).
- 4 7. Open carrying of a weapon, as defined in s.
5 790.053.
- 6 8. Exposure of sexual organs, as defined in s. 800.03.
- 7 9. Unlawful possession of a firearm, as defined in s.
8 790.22(5).
- 9 10. Petit theft, as defined in s. 812.014(3).
- 10 11. Cruelty to animals, as defined in s. 828.12(1).
- 11 12. Arson, as defined in s. 806.031(1).
- 12 985.212 Fingerprinting and photographing.--
13 (1)
14 (b) A child who is charged with or found to have
15 committed one of the following misdemeanors shall be
16 fingerprinted and the fingerprints shall be submitted to the
17 Department of Law Enforcement as provided in s. 943.051(3)(b):
- 18 1. Assault, as defined in s. 784.011.
- 19 2. Battery, as defined in s. 784.03.
- 20 3. Carrying a concealed weapon, as defined in s.
21 790.01(1).
- 22 4. Unlawful use of destructive devices or bombs, as
23 defined in s. 790.1615(1).
- 24 5. Negligent treatment of children, as defined in
25 former s. 827.05.
- 26 6. Assault on a law enforcement officer, a
27 firefighter, or other specified officers, as defined in s.
28 784.07(2)(a).
- 29 7. Open carrying of a weapon, as defined in s.
30 790.053.
- 31 8. Exposure of sexual organs, as defined in s. 800.03.

1 9. Unlawful possession of a firearm, as defined in s.
2 790.22(5).

3 10. Petit theft, as defined in s. 812.014.

4 11. Cruelty to animals, as defined in s. 828.12(1).

5 12. Arson, resulting in bodily harm to a firefighter,
6 as defined in s. 806.031(1).

7
8 A law enforcement agency may fingerprint and photograph a
9 child taken into custody upon probable cause that such child
10 has committed any other violation of law, as the agency deems
11 appropriate. Such fingerprint records and photographs shall be
12 retained by the law enforcement agency in a separate file, and
13 these records and all copies thereof must be marked "Juvenile
14 Confidential." These records shall not be available for public
15 disclosure and inspection under s. 119.07(1) except as
16 provided in ss. 943.053 and 985.04(5), but shall be available
17 to other law enforcement agencies, criminal justice agencies,
18 state attorneys, the courts, the child, the parents or legal
19 custodians of the child, their attorneys, and any other person
20 authorized by the court to have access to such records. These
21 records may, in the discretion of the court, be open to
22 inspection by anyone upon a showing of cause. The fingerprint
23 and photograph records shall be produced in the court whenever
24 directed by the court. Any photograph taken pursuant to this
25 section may be shown by a law enforcement officer to any
26 victim or witness of a crime for the purpose of identifying
27 the person who committed such crime.

28 985.215 Detention.--

29 (2) Subject to the provisions of subsection (1), a
30 child taken into custody and placed into nonsecure or home
31

1 detention care or detained in secure detention care prior to a
2 detention hearing may continue to be detained by the court if:

3 (a) The child is alleged to be an escapee or an
4 absconder from a commitment program, a community control
5 program, furlough, or aftercare supervision, or is alleged to
6 have escaped while being lawfully transported to or from such
7 program or supervision.

8 (b) The child is wanted in another jurisdiction for an
9 offense which, if committed by an adult, would be a felony.

10 (c) The child is charged with a delinquent act or
11 violation of law and requests in writing through legal counsel
12 to be detained for protection from an imminent physical threat
13 to his or her personal safety.

14 (d) The child is charged with committing an offense of
15 domestic violence as defined in s. 741.28(1) and is detained
16 as provided in s. 985.213(2)(b)3.

17 (e) The child is charged with a capital felony, a life
18 felony, a felony of the first degree, a felony of the second
19 degree that does not involve a violation of chapter 893, or a
20 felony of the third degree that is also a crime of violence,
21 including any such offense involving the use or possession of
22 a firearm.

23 (f) The child is charged with any second degree or
24 third degree felony involving a violation of chapter 893 or
25 any third degree felony that is not also a crime of violence,
26 and the child:

27 1. Has a record of failure to appear at court hearings
28 after being properly notified in accordance with the Rules of
29 Juvenile Procedure;

30 2. Has a record of law violations prior to court
31 hearings;

1 3. Has already been detained or has been released and
2 is awaiting final disposition of the case;

3 4. Has a record of violent conduct resulting in
4 physical injury to others; or

5 5. Is found to have been in possession of a firearm.

6 (g) The child is alleged to have violated the
7 conditions of the child's community control or aftercare
8 supervision. However, a child detained under this paragraph
9 may be held only in a consequence unit as provided in s.
10 985.231(1)(a)1.c. If a consequence unit is not available, the
11 child shall be placed on home detention with electronic
12 monitoring.

13
14 A child who meets any of these criteria and who is ordered to
15 be detained pursuant to this subsection shall be given a
16 hearing within 24 hours after being taken into custody. The
17 purpose of the detention hearing is to determine the existence
18 of probable cause that the child has committed the delinquent
19 act or violation of law with which he or she is charged and
20 the need for continued detention. Unless a child is detained
21 under paragraph (d), the court shall utilize the results of
22 the risk assessment performed by the intake counselor or case
23 manager and, based on the criteria in this subsection, shall
24 determine the need for continued detention. A child placed
25 into secure, nonsecure, or home detention care may continue to
26 be so detained by the court pursuant to this subsection. If
27 the court orders a placement more restrictive than indicated
28 by the results of the risk assessment instrument, the court
29 shall state, in writing, clear and convincing reasons for such
30 placement. Except as provided in s. 790.22(8) or in
31 subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c),

1 or paragraph (10)(d), when a child is placed into secure or
2 nonsecure detention care, or into a respite home or other
3 placement pursuant to a court order following a hearing, the
4 court order must include specific instructions that direct the
5 release of the child from such placement no later than 5 p.m.
6 on the last day of the detention period specified in paragraph
7 (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1.,
8 whichever is applicable, unless the requirements of such
9 applicable provision have been met or an order of continuance
10 has been granted pursuant to paragraph (5)(d).

11 Section 3. This act shall take effect October 1 of the
12 year in which enacted.

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14 HOUSE SUMMARY

15
16 Revises the penalties for certain offenses involving use
17 or possession of a firearm by a minor. Provides that
18 certain offenses constitute third degree felonies.
19 Requires mandatory detention for a specified period in a
20 secure facility for a first or subsequent offense.
21 Provides for performance of community service in a manner
22 involving a hospital emergency room or other medical
23 environment dealing on a regular basis with trauma
24 patients and gunshot wounds. Provides that the minor
25 offender may not receive credit for time served before
26 adjudication of certain offenses. Conforms references and
27 terminology.
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